

FEB 12 2002
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

Filed 3-12-02
 Clerk, U. S. District Court
 Western District of Texas
 65
 Deputy

Deputy

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The EEOC, Graham and the Railroad wish to settle this action without the necessity of further litigation, pursuant to the terms delineated in this Consent Decree.

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IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. This Court has jurisdiction of the subject matter of this action and the parties, venue is proper, and all administrative prerequisites to the filing of this action have been met. The Complaint states claims, which, if proved, would authorize the Court to grant relief against the Railroad pursuant to Title VII.

2. This Consent Decree resolves those claims against the Railroad raised in the Complaint in this case. The EEOC expressly reserves its right to process and litigate any other charges that may now be pending or may in the future be filed against the Railroad, except those charges filed by or on behalf of Graham.

3. The duration of this Consent Decree shall be two (2) years from the date of its filing with the Court. This Court shall retain jurisdiction of this action during the period of this Consent Decree and may enter such other and further relief as it deems appropriate to ensure implementation and enforcement of its provisions.

4. The Railroad, in settlement of this dispute and the two Charges of Discrimination filed by Graham against the Railroad, which are Charge Number 361-98-0361 and Charge Number 361-A1-0322, shall pay to Graham and his attorney the sum of \$150,000.00 (One Hundred Fifty Thousand Dollars), less applicable payroll deductions and taxes and applicable liens. The Railroad shall pay to Graham and his attorney the additional sum of \$100,000.00 (One Hundred Thousand Dollars), less applicable liens, in settlement of other disputes between Graham and the Railroad. These payments shall be made no later than ten (10) business days after counsel for the Railroad receives the fully executed settlement agreement between the Railroad and Graham. Copies of the settlement check and any accompanying transmittal documents shall be forwarded to the EEOC to the attention of Robert B. Harwin, Regional Attorney, 5410 Fredericksburg Road, Suite 200, San

Antonio, Texas 78229.

5. The Railroad, in providing references concerning Graham to prospective employers in accordance with the Railroad's policies regarding references, shall make no mention of matters arising under or relating to any charges of discrimination filed by Graham. This provision shall survive the expiration of this Consent Decree.

6. The Railroad shall continue to mail copies of its Equal Employment Opportunity policies, which are attached hereto as Exhibit A, annually to employees employed by the Railroad in the El Paso, Texas Transportation Department at their home addresses for the duration of this Consent Decree, and shall continue to display its Equal Employment Opportunity poster, a copy of which is attached hereto as Exhibit B, at the El Paso, Texas Transportation Department for the duration of this Consent Decree.

7. The Railroad shall continue to provide Equal Employment Opportunity training to its management and supervisory employees employed by the Railroad in the El Paso, Texas Transportation Department for the duration of this Consent Decree. The training will include information that it is unlawful to refuse a promotion to an employee on the basis of race, to terminate an employee because of his or her race, and to retaliate against an employee because he or she complains of discrimination. The training will also identify what activities and conduct is protected under Title VII, and will explain the damaging effects that race discrimination and retaliation have on employees and the workplace.

8. Within 180 days after the entry of this Consent Decree, the Railroad shall provide to the EEOC documentation that its management and supervisory employees employed by the Railroad in its El Paso, Texas Transportation Department have participated in the Railroad's Equal Employment Opportunity classroom training program for managers and supervisors either before

or after the entry of this Consent Decree, and have received copies of the Railroad's Equal Employment Opportunity policies mailed by the Railroad to the employees' home addresses in January 2002.

9. The EEOC shall have the right for the duration of this Consent Decree to ensure compliance with the terms of this Consent Decree and may: (a) conduct inspections of the Railroad's El Paso, Texas Transportation Department; (b) interview employees; and (c) examine and copy relevant documents.

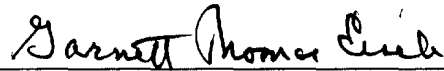
10. The Railroad is enjoined, during the term of this Consent Decree, from retaliating in any manner whatsoever against any employee employed by the Railroad in the El Paso, Texas Transportation Unit, including Graham while he is employed by the Railroad, for opposing any employment practice made unlawful by Title VII, or for complaining of unlawful discrimination, filing a discrimination charge, giving testimony or assistance, or participating in any lawful manner in any investigation, proceeding, hearing or action under Title VII. The Railroad is also enjoined, during the term of this Consent Decree, from denying any African-American employee employed by the Railroad in the El Paso, Transportation Unit a promotion on the basis of his or her race.

11. The terms of this Consent Decree shall be binding upon the EEOC, Graham and the Railroad and its agents or assigns as to the issues resolved herein.

12. The parties to this Consent Decree shall bear their own costs and attorney's fees incurred in this action. The parties agree that, pursuant to Section 706(k) of Title VII, 42 U.S.C. section 2000e-5(k), there is no "prevailing party" in this action or proceeding.

SO ORDERED.

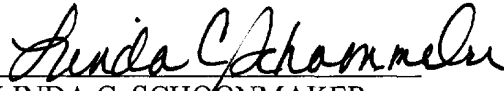
Signed this 11<sup>th</sup> day of February, 2002.



HONORABLE G. THOMAS EISELE  
UNITED STATES DISTRICT JUDGE

Respectfully submitted,


GWENDOLYN YOUNG REAMS  
Acting Deputy General Counsel



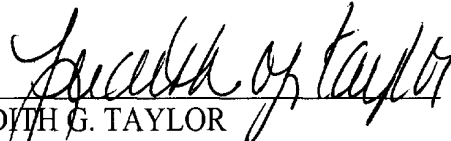
LINDA C. SCHOONMAKER  
Texas Bar No. 17806300

SEYFARTH SHAW  
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(713) 225-2300  
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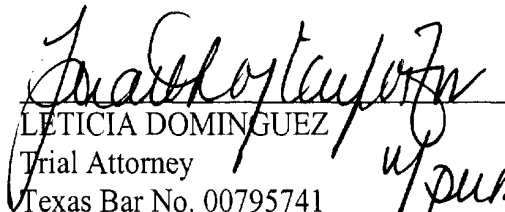
ATTORNEY FOR DEFENDANT



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JUDITH G. TAYLOR  
Supervisory Trial Attorney  
Texas Bar No. 19708300

  
LETICIA DOMINGUEZ  
Trial Attorney  
Texas Bar No. 00795741 *up permission*

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

El Paso Area Office  
4171 N. Mesa, Bldg. C, Suite 100  
El Paso, Texas 79902  
(915) 832-4036  
(915) 832-4026 Fax

ATTORNEYS FOR PLAINTIFF

  
MICHAEL COHEN  
Attorney-in-Charge for Plaintiff-Intervenor  
Texas Bar No. 04508450

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ATTORNEY FOR  
PLAINTIFF-INTERVENOR

## **Equal Employment Opportunity/Affirmative Action and Related Policy Directives**

Effective December 5, 2000

### **PURPOSE**

Union Pacific is strongly committed to equal opportunity in all employment matters. Our work environment must always be one that respects differences, whether based on race, color, gender, national origin, age, disability, religion, veteran status, or sexual orientation, so that all employees can contribute to their fullest potential. These Policy Directives explain what Union Pacific expects of its employees in this important area.

### **PROHIBITION OF DISCRIMINATION OR HARASSMENT**

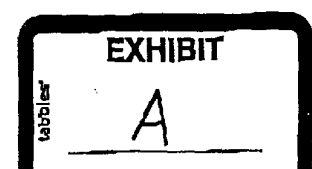
Union Pacific strictly prohibits any discrimination or harassment based on a person's race, color, gender, national origin, age, disability, religion, veteran status, sexual orientation, or any other ground prohibited by law ("protected status"). This policy covers all aspects of employment, including hiring, promotions, terminations, pay, and the work environment.

### **PROHIBITION OF OFFENSIVE BEHAVIOR & REMARKS**

Union Pacific is committed to providing a work environment free from offensive behavior or statements directed at a person's race, gender, or any other protected status. This policy prohibits such offensive behavior and remarks in the presence of other employees, contractors, customers, visitors, and any other persons. Please note that this policy prohibits such offensive behavior or statements in the workplace, while representing Union Pacific, or during travel or overnight stays paid for by Union Pacific that are derogatory of any person because of race, gender, or any other protected status even if no one who is present is offended by the behavior or remark.

The types of prohibited behavior include, but are not limited to, the following:

1. Any offensive or demeaning epithet or remark referring to race, gender, or other protected status, including that which is intended as humor;
2. Any offensive or demeaning comment, gesture, or other behavior directed toward another person because of that person's race, gender, or other protected status;
3. Use of Company property to display or store material that is demeaning or offensive on the basis of a protected status;
4. Sharing or displaying any item or material that is demeaning or offensive on the basis of a protected status;
5. Defacing Company property or personal property of another person for purposes of conveying a demeaning or offensive message based on or referring to a protected status; or
6. Creating any graffiti or other anonymous communication that refers to race, gender, or any other protected status.



### **ZERO TOLERANCE**

Union Pacific does not tolerate any type of discrimination, harassment, or offensive behavior based on a protected status. All proven violations of Union Pacific's policies against discrimination, harassment, and offensive behavior will result in appropriate discipline of the employee, up to and including termination. Graffiti or other anonymous communications in violation of this policy are particularly serious, and absent very compelling extenuating circumstances can result in dismissal on the first offense. Such anonymous communications will also be referred to the UPRR Police for an investigation.

### **REPORTING VIOLATIONS AND QUESTIONS**

Any person who believes that he or she is being subjected to behavior of this nature, or is aware of such prohibited conduct directed toward another person, has a responsibility to report the matter at once. Employees **MUST** come forward at once when violations occur or there is a need for further information or assistance. Any alleged policy violations will be investigated, maintaining confidentiality to the fullest extent consistent with a thorough investigation.

You **MUST** call the EEO Department using our toll free number that is maintained on a 24 hour basis at 1-866-877-3362 [1-866-UPR-EEOC].

Please note that a report of harassment or discrimination to a member of management, agreement foreman, or supervisor is **NOT** sufficient under this policy. Such behavior must be reported to the EEO Department, which will involve local managers and supervisors as appropriate. Also, anyone who learns about alleged harassment or discrimination, even if he or she did not personally witness the alleged discrimination or harassment, must immediately advise the EEO Department.

**EEO Department  
1416 Dodge Street  
Room 320  
Omaha, Nebraska 68179**

**1-866-877-3362**

### **PROHIBITION OF RETALIATION**

There will be no unlawful retaliation against any employee for making a good faith report of alleged violations of our Company's policy against discrimination, harassment, or offensive behavior; opposing any practice believed in good faith to be unlawfully discriminatory; or participating in an internal or government investigation of possible discrimination. Any employee who engages in prohibited retaliation will receive appropriate discipline, up to and including termination.

### **PROHIBITION OF SEXUAL HARASSMENT**

Union Pacific prohibits sexual harassment of employees, contractors, customers, visitors, and others that employees may come in contact with while working.



representing the Company, or while on Company travel. Union Pacific prohibits unwelcome sexual advances, requests for sexual favors, and other verbal or physical behavior of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile, or offensive work environment.

*Complaints of sexual harassment **MUST** be reported at once to the EEO Department in Omaha at 1-866-877-3362.*

#### **PREGNANCY & CHILDBIRTH**

As required by federal and state law, Union Pacific treats women affected by pregnancy, childbirth or related medical conditions at least as well as other employees with temporary disabilities.

#### **REASONABLE ACCOMMODATION OF DISABILITIES AND RELIGIOUS BELIEFS**

As required by federal and state law, Union Pacific will make reasonable accommodations for persons with statutorily protected disabilities when this will permit the person to perform the essential functions of the job and does not impose an undue hardship. The Company will also make reasonable accommodation for the religious needs of employees where such accommodation can be made without undue hardship. Persons wishing to request reasonable accommodation of a disability or religious beliefs should contact the EEO Department at 1-866-877-3362.

#### **AFFIRMATIVE ACTION PROGRAMS**

Union Pacific undertakes affirmative action to hire and advance qualified minorities, females, and eligible veterans (which generally includes persons who have served in the US military during any period of armed conflict). Under its affirmative action program for minorities and females, Union Pacific undertakes good faith efforts to correct any areas of underutilization and monitors its employment practices for potential discrimination. Persons who would like more information about Union Pacific's affirmative action plans and eligible veterans who wish to be included under this affirmative action program are invited to contact the EEO Department at 1-866-877-3362.

#### **FAMILY AND MEDICAL LEAVE ACT**

Under the FMLA, the Company provides eligible employees up to 12 weeks of unpaid leave each year (which in certain circumstances may be a combination of paid and unpaid leave) for qualifying FMLA-related conditions. Leave is provided for the birth or

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adoption of a child, placement of a foster care child, care of a spouse, child or parent with a serious health condition or for the employee's own serious health condition. Please consult the EEO Department for further information about FMLA leaves.

#### **GOVERNMENT AGENCIES**

In addition to reporting complaints of discrimination or harassment to the Union Pacific EEO Department, you have the right to file a complaint with the federal Equal Employment Opportunity Commission or a local employment rights agency. Telephone numbers for these agencies may be obtained from the posters at each facility or from the EEO Department.

#### **COMPLIANCE EXPECTATIONS**

Union Pacific expects each of its employees to be thoroughly familiar with the Policy Directives and make certain that their everyday actions are in compliance. Violation of these policies will result in appropriate discipline, up to and including termination.

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# EQUAL EMPLOYMENT OPPORTUNITY POLICY

**I**t is the policy of Union Pacific to provide equal opportunity in employment and to maintain a work environment free of discrimination and harassment based on race, gender, religion, age, sexual orientation, national origin or disability. In addition, applicants and employees of Union Pacific, a Federal government contractor, are protected under the following Federal authorities.

\* State and local laws may apply as well.

## RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral and other aspects of employment, on the basis of race, color, religion, sex or national origin. Executive Order 11246, as amended, in addition to the above, requires affirmative action to ensure equality of opportunity in all aspects of employment.

## SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act (see above), the Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

## AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

## DISABILITY

Section 503 of the Rehabilitation Act of 1973, as amended, prohibits job discrimination because of a disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with reasonable accommodations, can perform the essential functions of a job.

The Americans with Disabilities Act of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

Union Pacific is subject to the Americans with Disabilities Act (ADA). Consistent with the ADA, it is this company's policy to provide reasonable accommodations to any applicant or employee with a disability who needs such an accommodation to complete the job application process or to perform the job in question. If you need such an accommodation, you may request it at any time by contacting the Director of EEO/AA at (402) 271-4435 or your supervisor. Making a request for an accommodation will not subject you to any adverse treatment. Disclosures of your status as an individual with a disability, a special disabled veteran, a veteran of the Vietnam era or other eligible veteran is voluntary. Choosing not to provide it will not subject you to any adverse treatment.

## RETALIATION

Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by law.

## VIETNAM ERA AND SPECIAL DISABLED VETERANS

The Vietnam Era Veterans Readjustment Assistance Act of 1974 and The Veterans Employment Opportunities Act of 1998 prohibit job discrimination and require affirmative action to employ and advance in employment qualified Vietnam Era Veterans. Qualified Special Disabled Veterans and Other Eligible Veterans.

**Veteran of the Vietnam Era** means a person who: (A) served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred: (i) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (ii) between August 5, 1964, and May 7, 1975, in all other cases; or (B) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed (i) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (ii) between August 5, 1964, and May 7, 1975, in all other cases.

**Special Disabled Veteran** means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability (1) rated at 30 percent or more, or (2) rated at 10 to 20 percent in the case of a veteran who has been determined under Section 1506 of Title 38, U.S.C. to have a serious employment handicap, or (B) a person who was discharged or released from active duty because of a service-connected disability.

**Other Eligible Veteran** means a veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

If you have a disability or are a special disabled veteran, veteran of the Vietnam era or eligible veteran and would like to participate in our affirmative action program, please contact Director of EEO/AA at (402) 271-4435. Our affirmative action program contains policies and procedures that assure compliance. Whether you choose to so identify yourself is voluntary.

If you feel you have been discriminated against under any of the laws outlined on this poster or need assistance in this area, you must contact the EEO Department at 866-877-3362 (866-UPR-EEOC).

You may also contact the U.S. Equal Employment Opportunity Commission (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 or an EEOC field office by calling (800) 669-4000. For individuals with hearing impairments, EEOC's toll-free TDD number is (800) 800-3302.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact: The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor (DOL), 200 Constitution Avenue, N.W., Washington, D.C. 20210 or call (202) 219-9368 (DOL's toll-free TDD number for individuals with hearing impairments is (800) 326-2577 or an OFCCP regional or district office listed in most telephone directories under U.S. Government, Department of Labor.

**EXHIBIT**